

** E-filed on 7/27/05 **

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MARY SNOW,

Plaintiff,

V.

AT&T CORPORATION, NATALIE CLINTON,
and DOES 1-25, inclusive.

Defendants.

Case Number C 05-00599 JF

ORDER DENYING PLAINTIFF'S MOTION TO REMAND

[Docket No. 6]

Plaintiff Mary Snow (“Snow”) moves to remand the instant action to the Santa Clara Superior Court. Defendants oppose the motion. The Court has read the moving and responding papers and has considered the oral arguments of counsel presented on July 22, 2005. For the reasons set forth below, the motion to remand will be denied.

I. BACKGROUND

Snow is a former employee of Defendant AT&T Corporation (“AT&T”), where she was supervised by Defendant Natalie Clinton (“Clinton”). Snow alleges that she was being considered for a promotion, but that Clinton recommended her for termination upon learning that she was absent on maternity leave. Snow was terminated by AT&T on April 30, 2004. On December 8, 2004, Snow filed an action against AT&T and Clinton (collectively “Defendants”)

1 in the Santa Clara County Superior Court, alleging various state law claims for employment
 2 discrimination, wrongful termination, unfair business practices and intentional infliction of
 3 emotional distress. Snow mailed a copy of the summons and complaint to AT&T on December
 4 30, 2004. Enclosed with the service packet was a “Notice and Acknowledgment of Receipt”
 5 form (“the Form”) that AT&T was to sign, date, and return to Snow in order to complete service.
 6 AT&T did return the form to Snow. The form contains two spaces that require the recipient to
 7 indicate a date. In this instance, the “Date of receipt” was indicated as January 4, 2005, and the
 8 “Date this form is signed” was indicated as January 19, 2005. Betts Decl., Ex. 1. Clinton was
 9 personally served on January 11, 2005. On February 9, 2005, Defendants removed the action to
 10 this Court on the basis of diversity of citizenship, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. §
 11 1332. Snow filed the instant motion to remand the case to state court on March 10, 2005,
 12 alleging that Defendants’ notice of removal was not timely filed.

13 **II. LEGAL STANDARD**

14 Pursuant to 28 U.S.C. § 1441(a), often referred to as “the removal statute,” a defendant
 15 may remove an action to federal court if the plaintiff could have filed the action in federal court
 16 initially. 28 U.S.C. § 1441(a); *see also Ethridge v. Harbor House Restaurant*, 861 F.2d 1389,
 17 1393 (9th Cir. 1988). A party may file an action in federal court if there is diversity of
 18 citizenship among the parties or if the action raises a substantial federal question. *Ethridge*, 861
 19 F.2d at 1393. The party invoking the removal statute bears the burden of establishing federal
 20 jurisdiction. *Id.* The removal statute is strictly construed against removal. *Id.* The matter
 21 therefore should be remanded if there is any doubt as to the existence of federal jurisdiction.
 22 *Gaus v. Miles, Inc.*, 980 F.2d 564, 565 (9th Cir. 1992).

23 **III. DISCUSSION**

24 Snow moves to remand this action to state court on the ground that Defendants’ notice of
 25 removal was not timely filed.¹ In a civil action, a notice of removal “shall be filed within thirty
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27 ¹ In her original motion, Snow also argued that Defendants failed to sufficiently establish
 28 diversity. However, Snow withdrew this argument in her reply brief.

1 days after the receipt by the defendant, through service or otherwise, of a copy of the initial
 2 pleading setting forth the claim for relief upon which such action or proceeding is based.” 28
 3 U.S.C. § 1446(b). The Supreme Court has held that the “defendant’s time to remove is triggered
 4 by simultaneous service of the summons and complaint . . . but not by mere receipt of the
 5 complaint unattended by any formal service.” *Murphy Brothers, Inc. v. Michetti Pipe Stringing,*
 6 *Inc.*, 526 U.S. 344, 347-48 (1999).

7 The issue before the Court, then, is when the complaint and summons were formally
 8 served upon AT&T.² The California Code of Civil Procedure states that “[s]ervice of a summons
 9 . . . is deemed complete on the date a written acknowledgment of receipt of summons is
 10 executed, if such acknowledgment thereafter is returned to the sender.” Cal. Civ. Proc. Code §
 11 414.30(c). Snow argues that the Form was signed, and thus executed, on January 4, 2005, the
 12 date marked on the Form as “Date of receipt.” Snow bases this contention on the fact that the
 13 “Date of receipt” appears on the Form on the same line as the “Signature of person
 14 acknowledging receipt.” Betts Decl., Ex. 1. In this case, thirty days from Snow’s proposed date
 15 of formal service was February 3, 2005, which would render untimely Defendants’ filing of the
 16 notice of removal on February 9, 2005. However, if the “Date of receipt” line was intended to
 17 indicate the date on which the Form was signed, there would be no need to have a separate line
 18 explicitly indicated as the “Date this form is signed.” While the placement of the “Date of
 19 receipt” line adjacent to the “Signature of person acknowledging receipt” line may lend itself to
 20 some confusion, the only reasonable construction of the Form supports a conclusion that the
 21 Form was signed and executed on the date entered on the line marked “Date this form is signed,”
 22 which is January 19, 2005. Thirty days from January 19, 2005 was February 18, 2005, thus
 23 Defendants’ filing of the notice of removal on February 9, 2005 was timely.

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27 ² There is no dispute as to the fact that Clinton was personally served on January 11,
 28 and that Defendants’ notice of removal was filed within thirty days thereafter.

IV. ORDER

Good cause therefore appearing, IT IS HEREBY ORDERED that Snow's motion to remand is DENIED.³

DATED: July 22, 2005

/s/ electronic signature authorized
JEREMY FOGEL
United States District Judge

³ In finding that removal by Defendants was proper, this order renders moot Snow's request for attorney's fees and costs incurred as a result of removal.

1 This Order has been served upon the following persons:

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